

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN POTTS,
Petitioner,
v.
J. GASTELO,
Respondent.

Case No. 1:20-cv-01236-NONE-HBK

ORDER DENYING PETITIONER'S MOTION
FOR AN EXTENSION OF AEDPA'S TIME
LIMITATIONS

(Doc. No. 3)

Petitioner Kevin Potts, a state prisoner proceeding *pro se*, has pending a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Petitioner filed a pleading titled "Motion for Leave to Act After Expiration of Time F.R.C.P. (6)." (Doc. No. 3). To the extent discernable, Petitioner appears to be requesting an extension of his filing deadline under the Antiterrorism and Effective Death Penalty Act's ("AEDPA") limitations deadline. (*See generally Id.*). A petitioner seeking habeas relief under § 2254 must comply with AEDPA's limitations period. For most habeas petitioners, the one-year limitations period applies and starts to run on "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 42 U.S.C. § 2244(d)(1)(A). Statutory tolling applies to the "time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." *Id.* § 2244(d)(2). Courts cannot override AEDPA's statute of limitations and statutory tolling rules, however a petitioner may seek equitable tolling.

1 Equitable tolling may be granted to a petitioner under limited circumstances. *Holland v.*
2 *Florida*, 560 U.S. 631, 649 (2010). A petitioner can obtain equitable tolling if he shows: “(1) that
3 he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in
4 his way and prevented timely filing.” *Williams v. Filson*, 908 F.3d 546, 558 (9th Cir. 2018) (quoting
5 *Holland*, 560 U.S. at 649).

6 Here, Petitioner generally complains that difficulties arising from the coronavirus outbreak
7 prevented him from timely filing his petition. (Doc. No. 3). Petitioner does not provide enough
8 facts in his motion for the Court to determine whether he is entitled to equitable tolling. *See*
9 *generally Holland*, 560 U.S. at 649. Moreover, the Court has not yet determined that his petition
10 is time-barred. To the extent Petitioner seeks an extension of AEDPA’s statute of limitations, his
11 motion is premature. Should the Court determine that the petition appears time-barred the Court
12 will afford Petitioner an opportunity to show cause why the petition should not be dismissed as
13 untimely. Alternatively, if the respondent seeks dismissal of the petition as untimely, Petitioner
14 may advance an equitable tolling argument in his reply brief.

15 Accordingly, Petitioner’s construed motion for extension of time to AEDPA’s time
16 limitation (Doc. No. 3) is **DENIED**.

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18 IT IS SO ORDERED.

19 Dated: December 8, 2020

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21 HELENA M. BARCH-KUCHTA
22 UNITED STATES MAGISTRATE JUDGE
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